

**ENVIRONMENTAL QUALITY COUNCIL
LAND USE/ENVIRONMENTAL TRENDS SUBCOMMITTEE**

Meeting Minutes

May 4, 2000

Draft: June 30, 2000

Approved: July 27, 2000

SUBCOMMITTEE MEMBERS PRESENT

Mr. Jerry Sorensen

Ms. Julia Page

Sen. Spook Stang

Rep. Bill Tash

SUBCOMMITTEE MEMBERS EXCUSED

None

STAFF MEMBERS PRESENT

Mary Vandebosch

Judy Keintz, Secretary

Visitors' list (Attachment 1)

Agenda ([Attachment 3](#))

SUBCOMMITTEE ACTION

- ▶ Identified options for funding growth policies. Public comment will be solicited on the options.
- ▶ Decided to produce a guide for local communities to use in considering setback requirements for riparian areas.
- ▶ Approved minutes of the March 23,2000 meeting.
- ▶ Set the next meeting for July 27" in Helena.

CALL TO ORDER AND ROLL CALL

MR. SORENSEN called the meeting to order at 10:00 a.m. Roll call was noted; all members were present ([Attachment 2](#)).

II MONTANA GROWTH POLICY FORUM

MS. VANDENBOSCH reported that the Montana Growth Policy Forum met on April 6th. There was an agreement on the need to fund implementation of SB 97. The group plans to meet again in July. She further noted that some counties think growth policies are required under law.

Dale Beland, Bozeman, commented that both the City of Bozeman and Gallatin County are updating their plans. One of the opportunities that has not been sufficiently explained is the ability to define a growth area and to facilitate desired development in that manner. Increased predictability will take place when policy is established up front.

Gavin Anderson, Department of Commerce, noted that 25 to 30 different jurisdictions are involved in developing growth policies. The CDBG has a program for technical assistance funding. This year, ten applications have been received for growth policy development. The applications are currently being evaluated. The cap is \$15,000 with a 50% match. The match may include in-kind contributions. He raised a concern that the projects may end up being underfunded.

The Department is working on guidelines to address growth policies which should be completed by July. They are also working on a resource book which will provide information on growth policy matters.

III RESIDENTIAL DEVELOPMENT IN RIPARIAN AREAS

MS. VANDENBOSCH commented that a memo had been prepared regarding the use of setback requirements to address residential development in riparian areas by selected Montana communities, [Exhibit 1](#). She commented that the Subcommittee decided to focus on residential development in riparian areas. Specifically, the Subcommittee wished to review local setback requirements. She identified three options. The first option was to prepare a brief guide on the use of setback requirements by local communities. It might be helpful to local governments to provide background information on takings. Option two would include option one and also include several recommendations. Option three is to briefly summarize state and federal laws that apply to residential development in riparian areas.

MS. VANDENBOSCH reported that she interviewed planning staff from five jurisdictions in regard to setback requirements. These jurisdictions included: Choteau County, Madison County, Park County, Powell County, and City of Missoula and Missoula County. Local communities use setback requirements to accomplish a diverse set of goals. The three general approaches used include a fixed distance, a performance standard and a combination of the two.

MS. PAGE remarked that she was struck by the diversity of setback requirements and the lack of guiding policy for the tools. MS. VANDENBOSCH noted that each community did have goals

and a rationale for the setback requirements; however, when considered together the goals cover a broad spectrum.

Janet Ellis, Montana Audubon, remarked that the publication they are producing will provide information regarding the purpose of using setbacks, advantages and disadvantages of using setbacks to protect wetland riparian areas, and one Montana case history. She raised a concern regarding the implications for takings in using setbacks.

Jane Jelinski, Montana Association of Counties (MACo), agreed that a synopsis of case law in regard to takings would be useful. She added that having the setback requirements in subdivision regulation leaves a hole. If the property is not being subdivided and an inappropriate setback is being used, there isn't much that a county can do to address the issue.

MR. SORENSEN remarked that this issue needs to be addressed in a growth policy and the community needs to decide how to deal with the issue at a local level. He suggested that the Subcommittee prepare a guide including what is being done in jurisdictions; the authority available to accomplish setbacks; and highlight that residential development in riparian areas should be addressed in a growth policy.

MS. PAGE noted that the Montana Consensus Council (MCC) has reviewed the tools and efforts involved with stream corridor protection generally. She noted that the DEQ has prepared a publication on this topic. A lot of the work has been done.

Ms. Ellis added that their publication will include language to encourage protection of wetland riparian areas that could be used in a growth policy.

Byron Roberts, MBIA, remarked that research and data should be used in defining riparian areas. Local governments have different goals and reasons for protecting riparian areas.

MS. PAGE noted that the MCC identified defining the area as an issue.

The Subcommittee agreed to prepare a very brief guide on the use of setback requirements by local communities. Information about how to avoid "takings" will be included. The role of growth policies will be emphasized. Also, the applicable state and federal laws will be provided. This will be an informational document and comment will be requested before it is finalized.

Jean Marie Souvigney, Livingston, remarked that in jurisdictions where setbacks only apply to subdivision regulations, there must be development occurring that does not include subdividing. Some picture of the extent of development in the floodplain would be useful. MS. VANDENBOSCH stated that the Park County Environmental Council is working on a project using aerial photos.

Mr. Beland stated that the Gallatin County Growth Policy Program was able to use a federal grant which allowed them to prepare digital mapping. Also, the MSU Biology Department produced a digital file of fish and wildlife habitat assessment.

MS. VANDENBOSCH remarked that this information could be added to the report.

IV FUNDING FOR DEVELOPMENT AND IMPLEMENTATION OF GROWTH POLICIES

MS. VANDENBOSCH provided a handout showing the transfers from the Shared Coal Tax Account to the General Fund, **Exhibit 2**. She also provided a list of the CDBG Planning Grant Applications for 2000, **Exhibit 3**. Several of the applications are to help pay for growth policies. The Department of Commerce will be able to fund most (87%), but not all of the applications.

Ms. Jelinski provided written comments from Howard Gipe, Chairman of the MACO Land Use Planning Committee, **Exhibit 4**. They would oppose using the 8.36% coal tax entitlement to fund growth policy. Even though it is a small amount, the small eastern counties would be jeopardized because they do not have the staff available to prepare a grant. The MACo recommends that the preferred source of revenue for funding growth policies would be an appropriation from the bed tax revenue.

SEN. STANG raised a concern that there would be a large lobbying effort to prevent the bed tax appropriation from being expanded. The local option tax may be a better method.

Mr. Roberts maintained that planning needs to take place at the local level and in order for that to happen, some form of funding needs to be available. A source of funding needs to be targeted for the development of growth policies.

Peggy Trenk, Montana Association of Realtors, stated that they are cautious about a generic state role in funding growth planning. The General Fund is not a stable source of funding. They continue to be opposed to a realty transfer tax. Grants have some appeal in that they allow limited public resources to be leveraged.

MS. PAGE stated that bed tax funds are increasing. It is her interest to have healthy communities with growth policies in place that provide a better landing spot for tourists. The bed tax is a logical source for funding growth policies. She suggested more communication with Travel Montana on the issue.

Ms. Jelinski stated that she would visit with Travel Montana in this regard. There is a connection between millions of tourists and local government planning for the impacts which follow.

SEN. STANG stated that most of the people collecting the bed tax are tired of being the tax collector for the state. It will be very difficult to get their cooperation in this matter.

MR. SORENSEN questioned the level of funding that might be adequate. **Mr. Anderson** stated that with a 50% match, a minimum of \$50,000 would be needed per jurisdiction. He stressed the importance of having an alternate funding source in hand during the next session.

MS. VANDENBOSCH provided a copy of her memo of March 21, 2000 that addressed funding for development and implementation of local growth policies, [Exhibit 5](#). She explained that 8.36 percent of the coal severance tax is statutorily allocated for five programs. County Land Planning is one of the programs. The Legislature appropriates the funds each biennium. The amount is approximately \$200,000 each fiscal year. The counties receive between \$3,000 to \$6,000 depending on size. The funds are to be used for land planning purposes. There is no explicit authorization to use the funds for development of subdivision or zoning regulations.

MR. SORENSEN questioned whether the amount of 8.36% could be changed. **Mr. Anderson** remarked that their program appears before the legislative committee to explain the use of the funds. Last session the coal producing counties questioned why they should be sending money to all the other counties.

MS. VANDENBOSCH clarified that 50% of the coal severance tax collections are allocated to the trust fund by the Constitution but the rest of the funds could be changed by the Legislature.

MR. SORENSEN stated that he was not convinced that the County Land Planning Program is accomplishing much. He believed the counties may be better served by applying for a grant.

MS. PAGE noted that the larger counties may be able to receive most of the grant funds. This would cause problems for the smaller counties. There needs to be a certain amount set aside for the smaller counties to allow them a chance to succeed in obtaining a grant.

MR. SORENSEN agreed that funds needed to be equally shared among the different sized jurisdictions.

MS. VANDENBOSCH summarized that Option A4 on page 6 would be a draft recommendation of the Subcommittee. She added that another draft recommendation would be the bed tax and local option tax.

MR. SORENSEN noted that counties have authority to levy mills for planning. This is statutorily capped.

Ms. Jelinski remarked that under 76-1-405, MCA, a county of the first class may levy a tax not to exceed 2 mills. The levy excludes incorporated cities in the county. In Gallatin County a mill levied at over \$110,000 generates approximately \$50,000. The counties do not have ability to raise additional revenue at this time. The tax breaks are incremental and continue to gut the source of revenue for counties.

MR. SORENSEN questioned whether raising the allowable mill levy for planning and also making a levy for planning exempt from 1-105 would be another way of addressing the funding issue.

Mr. Anderson stated that excluding cities and towns [from the mill levy] doesn't leave the county with much funding.

The Subcommittee decided to put the recommendation on the list for public comment.

MS. PAGE asked about realty transfer taxes.

Mr. Beland stated that they looked into a 1% levy on real estate transactions in their county. The 1% levy would have raised over a million dollars a year. They were not successful in obtaining support from the local realtors.

Ms. Trenk stated that the problem involves taxing buyers and sellers of homes to pay for a community process.

Mr. Roberts commented that affordable housing is an issue in Montana and this additional fee would be a problem.

MR. SORENSEN raised a concern about an option that the realtor group opposed. He asked **Ms. Trenk** to see if there were any conditions under which the realty transfer tax may be a viable option.

The Subcommittee decided to seek public comment on the following options:

- A portion of the lodging facility use tax (bed tax) revenue.
- A combination of the general fund and the portion of the coal severance tax that is currently allocated for county land planning funds.
- Local option sales tax.
- Local option bed tax.
- Exemption from the property tax freeze established by Initiative 105.
- Increased special mill levy for planning.

MS. VANDENBOSCH remarked that in regard to the framework for the grant program, the SB 407 model could be used for requesting comments.

MR. SORENSEN added that an allocation system should be included that would recognize the differences between smaller and larger counties. The grant money could be used for a growth policy or for implementing tools for an adopted growth policy.

V ADMINISTRATIVE MATTERS

► **Adoption of Minutes**

Motion/Vote: SEN. STANG MOVED THAT THE MINUTES OF THE MARCH 23,2000 LAND USE/ENVIRONMENTAL TRENDS SUBCOMMITTEE MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

► **Next Meeting**

The next meeting was set for July 27th in Helena. The Legislative Audit Division will be asked to give a presentation on the subdivision regulation process.

VI ADJOURNMENT

There being no further business, the meeting was adjourned.